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IMPOSITION OF TRAFFIC REGULATIONS UPON FOREST DEVELOPMENT ROADS



A REPORT TO THE FORTY-SECOND
LEGISLATIVE ASSEMBLY

by the

ATTORNEY GENERAL

ROBERT L. WOODAHL

December 1970

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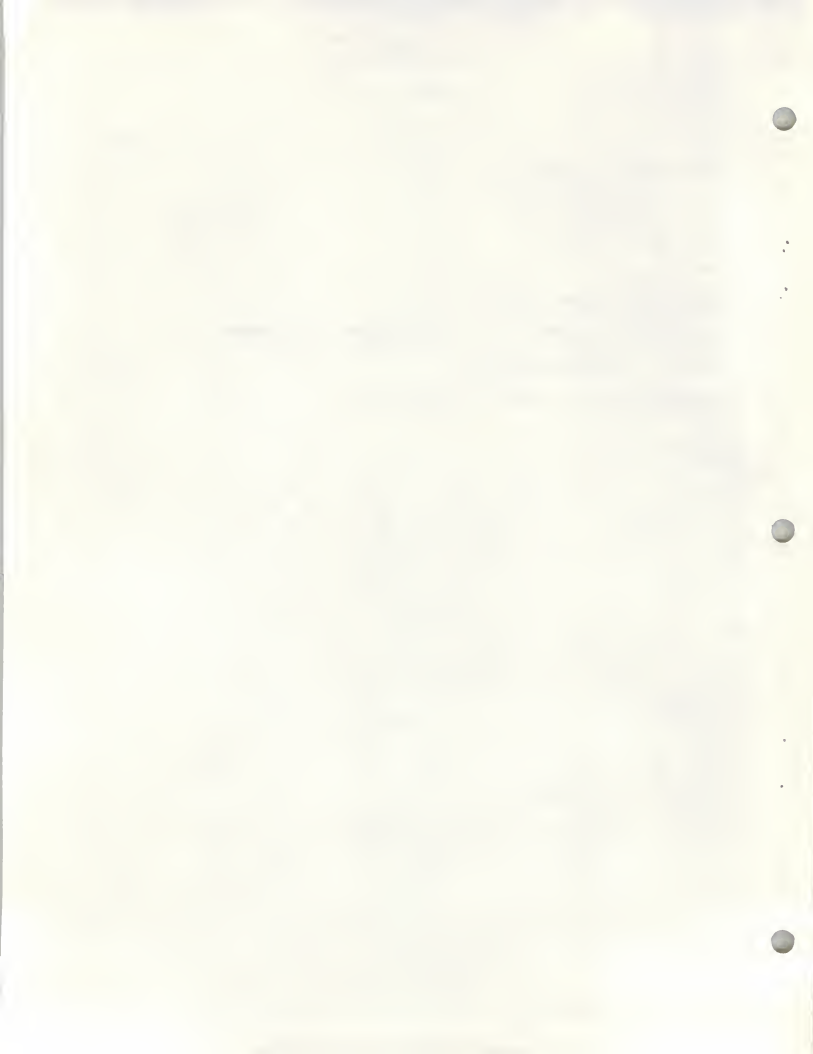


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HOUSE RESOLUTION NO. 10

Introduced by Teeple, Dye, Payne, Fleming, Harlow, Kendall, Schoonover, Melcher, Baeth, Johnston, Aubert, Gilligan, Romney, Staigmiller, Watt, Steele, Robbins, Zimmer, Fasbender, Marks, Jordan, Combs, Hemstad, East

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ATTORNEY GENERAL TO STUDY THE NEED FOR REGULATION OF THE USE OF ROADS AND HIGHWAYS WHICH TRAVERSE NATIONAL FORESTS LOCATED IN MONTANA; AND TO RECOMMEND ANY NECESSARY LEGISLATION TO PROVIDE FOR THE ADEQUATE REGULATION OF THE USE OF THE ROADS AND HIGHWAYS TO THE FORTY-SECOND LEGISLATIVE ASSEMBLY.

WHEREAS, there are numerous roads and highways which traverse the national forests located in Montana; and

WHEREAS, because of increases in the leisure time of the American people, there is now a great demand for the use of the roads and highways which are in our national forests for hunting, fishing, winter sports, scenic beauty, and other outdoor recreation; and

WHEREAS, because of increases in the population of the American people there will be an even greater demand for travel through our national forests in the future; and

WHEREAS, there is presently no traffic regulation on these roads and highways which traverse our national forests; and

WHEREAS, because of this lack of traffic regulation, there is evidence of misuse of these roads and highways creating a clear and present danger to the general public in their use of the aforementioned roads and highways,

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Attorney General is requested to study the need for traffic regulation on roads and highways which traverse the national forests located in Montana.

BE IT FURTHER RESOLVED, that the Attorney General prepare and have ready for submission to the Forty-second Legislative Assembly such plans and programs as he may formulate under this directive, together with suitable recommendations, and a draft of any proposed legislation to carry out these objectives.

BE IT FURTHER RESOLVED, that the chief clerk of the House of Representatives is instructed to send a copy of this resolution to the Attorney General.



SENATE RESOLUTION NO. 21

Introduced by Hafferman, Mahoney, Dzivi, McDonald, Anderson, Mitchell, Gilfeather, Bertsche, Boylan, Thiessen, Manning, James, Goodheart, Bennett, Cotton, Reber, Graham, Nees, De-Wolfe, Siderius, Northey, Hazelbaker, Broeder, Sparks, Groff, Lynch, Folsom, Reardon, Keenan, Sheehy, Shugrue, Deschamps, Moore, Stein, Cochrane, Mackay

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE ATTORNEY GENERAL TO STUDY THE NEED FOR REGULATION OF THE USE OF ROADS AND HIGHWAYS WHICH TRAVERSE NATIONAL FORESTS LOCATED IN MONTANA; AND TO RECOMMEND ANY NECESSARY LEGISLATION TO PROVIDE FOR THE ADEQUATE REGULATION OF THE USE OF THE ROADS AND HIGHWAYS TO THE FORTY-SECOND LEGISLATIVE ASSEMBLY.

WHEREAS, there are numerous roads and highways which traverse the national forests located in Montana; and

WHEREAS, because of increases in the leisure time of the American people, there is now a great demand for the use of the roads and highways which are in our national forests for hunting, fishing, winter sports, scenic beauty, and other outdoor recreation; and

WHEREAS, because of increases in the population of the American people there will be an even greater demand for travel through our national forests in the future; and

WHEREAS, there is presently no traffic regulation on these roads and highways which traverse our national forests; and

WHEREAS, because of this lack of traffic regulation, there is evidence of misuse of these roads and highways creating a clear and present danger to the general public in their use of the aforementioned roads and highways.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Attorney General of the state of Montana is requested to study the need for traffic regulation on roads and highways which traverse the national forests located in Montana.

BE IT FURTHER RESOLVED, that the Attorney General prepare and have ready for submission to the Forty-second Legislative Assembly such plans and programs as he may formulate under this directive, together with suitable recommendations, and a draft of any proposed legislation to carry out those objectives.

BE IT FURTHER RESOLVED, that the Secretary of the Senate is instructed to send a copy of this resolution to the Attorney General.



INTRODUCTION

In Montana, Forest Development Roads and those roads designated as Special Service Roads are not included under the definition of a highway and hence the state's traffic laws do not pertain to these roads. There are 12,815.5 miles of Forest Development Roads in this state. These roads are divided into four classes:

1. Primitive roads: 3,624.3 miles;
2. Graded and drained surface roads: 7,614 miles;
3. Gravelled surface roads: 1,305.8 miles;
4. Surfaced roads: 271.4 miles.

This study will concern itself with imposing the state traffic regulations upon these Forest Development Roads with emphasis directed at the latter two classifications.

A Forest Development Road, which has the classification number "4", is comparable in structure to the finest state highways. Most people who make use of these roads are unaware that the state traffic laws do not apply to them, but many have learned that the highway patrol and local law enforcement officials do not have authority or jurisdiction to enforce the traffic regulations. Often motorists who make use of these roads do so in a reckless and careless manner, some deliberately so, because they know they cannot be apprehended for violating a provision of the state traffic code. In various areas of the state these Forest Development Roads are used for purposes of dragracing and other games involving speed. These practices have resulted in several deaths and in a considerable number of injuries. It appears that people will continue to abuse the use of these roads until state traffic laws are made applicable



to them and motorists will know that they can be apprehended for any traffic violation.

Over a year ago the highway patrol and the county officials of Lincoln County consented to have the highway patrol enforce the state traffic laws on the Pipe Creek Road. Because the people knew that the highway patrol might be present the number of traffic fatalities and injuries has decreased considerably. No longer did people openly and flagrantly, without fear, abuse their driving privileges.

The intent of the proposed legislation would be to confer upon the highway patrol and local officials the authority to enforce the state traffic laws. This would not mean that more highway patrolmen would have to be employed by the state. It is believed that it would be a sufficient deterrent if motorists knew that the highway patrol might be in the area and might be patrolling the Forest Development Road. It would be impossible to have highway patrolmen constantly patrolling these roads, but the highway patrol believes that a patrolman could be assigned to these areas at various intermittent times. Another advantage of this proposed legislation would be that if an accident does occur on these roads the highway patrol and the local authorities would have jurisdiction to investigate the accident. As state law is presently, neither of these authorities has the power to investigate. The main purpose of the bill, though, is to save lives and to prevent unneeded highway fatalities and casualties.

The attorney general wishes to express his appreciation to a number of persons for their assistance and help in writing this study and in drafting the proposed legislation. The people who



have assisted in this are: Representative Randall Teeple of Lincoln County, Senator Fred Broeder, Jr. of Flathead County, Col. Shirley Hancock, former chief of the highway patrol, William C. Mortieau, G.V.W. supervisor, Montana highway department, Neil M. Rahm, regional forester, United States department of agriculture, Cliff Miller, regional engineer of the forest service. United States department of agriculture, and especially Robert Parker, office of the general counsel, United States department of agriculture. Mr. Parker's time, effort, concern and enthusiasm are indeed appreciated.

GENERAL

House Resolution No. 10 and Senate Resolution No. 21 requested the attorney general to conduct a comprehensive study on the feasibility of imposing the state's highway traffic regulations to vehicles using Forest Development Roads and those roads designated as "Special Service Roads". In Montana there are approximately 12,815.5 miles of Forest Development Roads. The speed and traffic laws of Montana do not apply to these Forest Development Roads because these roads do not fall under the definition of a highway as defined in the highway traffic code. Consequently, the highway patrol and local law enforcement officials have no jurisdiction to investigate accidents or regulate traffic; that is, apprehend violators who are misusing these roads.

In the last two legislative sessions bills have been introduced to redefine the term "public highways" so that Forest



Development Roads would be included therein. These bills were supported by the United States forest service, department of agriculture, highway patrol, highway department, and county officials and representatives from industries, mainly railroad and logging, who make use of these roads. These bills when considered by the various legislative committees received a "do not pass" recommendation. They were subsequently not passed by the 40th or 41st legislative assemblies. This study will include an analysis of the former bill that was introduced and a new bill which would confer the necessary jurisdiction without amending any existing legislation.

NEWLY PROPOSED LEGISLATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE MONTANA TRAFFIC LAWS APPLICABLE TO FOREST DEVELOPMENT ROADS EXCEPT AS ADDITIONAL OR CONFLICTING RULES MAY BE DESIGNATED BY THE UNITED STATES FOREST SERVICE FOR PORTIONS THEREOF DESIGNATED AS SPECIAL SERVICE ROADS, AND TO CONFER LAW ENFORCEMENT JURISDICTION UPON THE MONTANA HIGHWAY PATROL AND SHERIFFS OF THIS STATE TO ENFORCE THE TRAFFIC LAWS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. For the purpose of this act, a "Forest Development Road" is defined as a road located on national forest lands or on a right of way acquired by the United States and used for the protection, administration and utilization of the national forests and other lands administered by the United States Forest Service;



and a "Special Service Road" is defined as a Forest Development Road or segment thereof, the right of way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a Special Service Road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the Forest Development Transportation System.

Section 2. Forest Development Roads in the state of Montana, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

Section 3. When Forest Development Roads, or segments thereof, are designated as Special Service Roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional or conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such Special Service Road.

APPLICATION AND EXPLANATION OF PROPOSED LEGISLATION

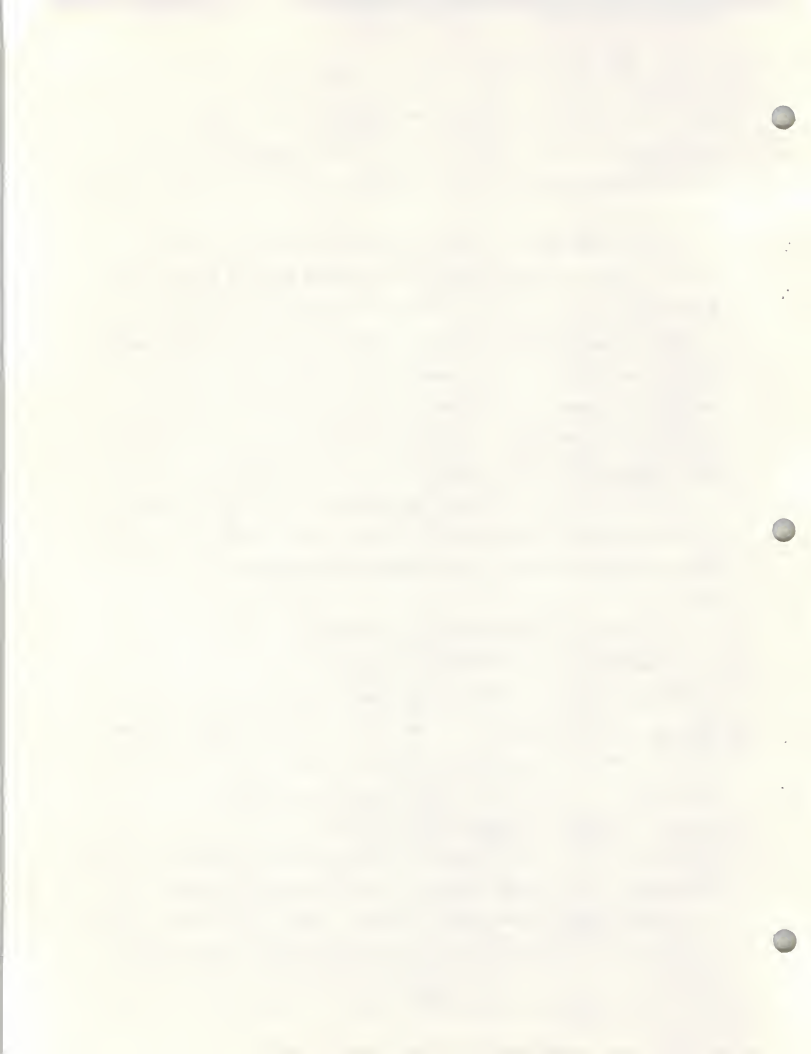


Section 1. The term "Forest Development Road" is in conformity with the definition contained in Title 36, Code of Federal Regulations, section 212.1 (d). The term "Special Service Road" is taken from Title 36, Code of Federal Regulations, section 212.7 (b).

Forest Development Roads and those designated as Special Service Roads are constructed entirely from federal funds which are derived from appropriations by Congress from the general treasury, from the sale of public timber, or by contributions by private landowners. These roads are maintained by the forest service with funds appropriated by Congress from the general treasury, by purchasers of national forest timber and other commercial haulers who are required to maintain roads or to bear the cost of maintenance to measure with their use by private owners of land or resources who have cooperated in constructing the road and who are obligated to bear maintenance costs commensurate with their use.

It should be noted again that no state or county monies are ever used to construct or maintain these roads. If the state traffic laws apply to these Forest Development Roads, the forest service, in consultation with the state, will determine the need for and provide the signs for safety and regulation of traffic. The purchase, installation and maintenance of these signs will be financed entirely by the forest service.

Section 2. Under the law as it now exists in Montana, traffic using Forest Development Roads is not subject to the state and local motor vehicle laws and ordinances; hence, the highway patrol and local sheriffs have no jurisdiction to enforce any traffic



regulations on vehicles using these roads. In order for the highway traffic code to apply to these Forest Development Roads and Special Service Roads these roads must be recognized as a public highway within the meaning of Title 32, chapter 21, Revised Codes of Montana, 1947, or a law must be passed which makes these Forest Development Roads subject to the state traffic laws and which confers the necessary jurisdiction upon the highway patrol and local sheriffs to enforce these laws. If the latter approach is used, section 32-2114, Revised Codes of Montana, 1947, would not have to be amended to include a Forest Development Road within the meaning of a public highway.

As noted before, the traffic laws of Montana do not apply to these forest service roads. The forest service has no jurisdiction over accidents which do not involve forest service employees or vehicles, or which do not cause damage to government property or in which no claim of negligence on the part of the government in the maintenance of such roads used by the public is made. Consequently, if a private or public vehicle is involved in an accident, the forest service does not have jurisdiction to investigate the accident and the highway patrol and the local sheriff do not have jurisdiction nor the authority to investigate.

As noted before, often it is necessary for the forest service to impose special rules on certain roads to accomplish particular purposes that are not defined in the state laws. When this is done, the Forest Development Road is classified as a "Special Service Road". The secretary of the department of agriculture regulation, Title 36, Code of Federal Regulation 212.7 (a) (2), states that:



"Traffic on special service roads is subject to State traffic laws where applicable, except to the extent the Chief [of the Forest Service] deems it necessary to prescribe rules in addition thereto or in conflict therewith to accomplish the purposes of these regulations. ***."

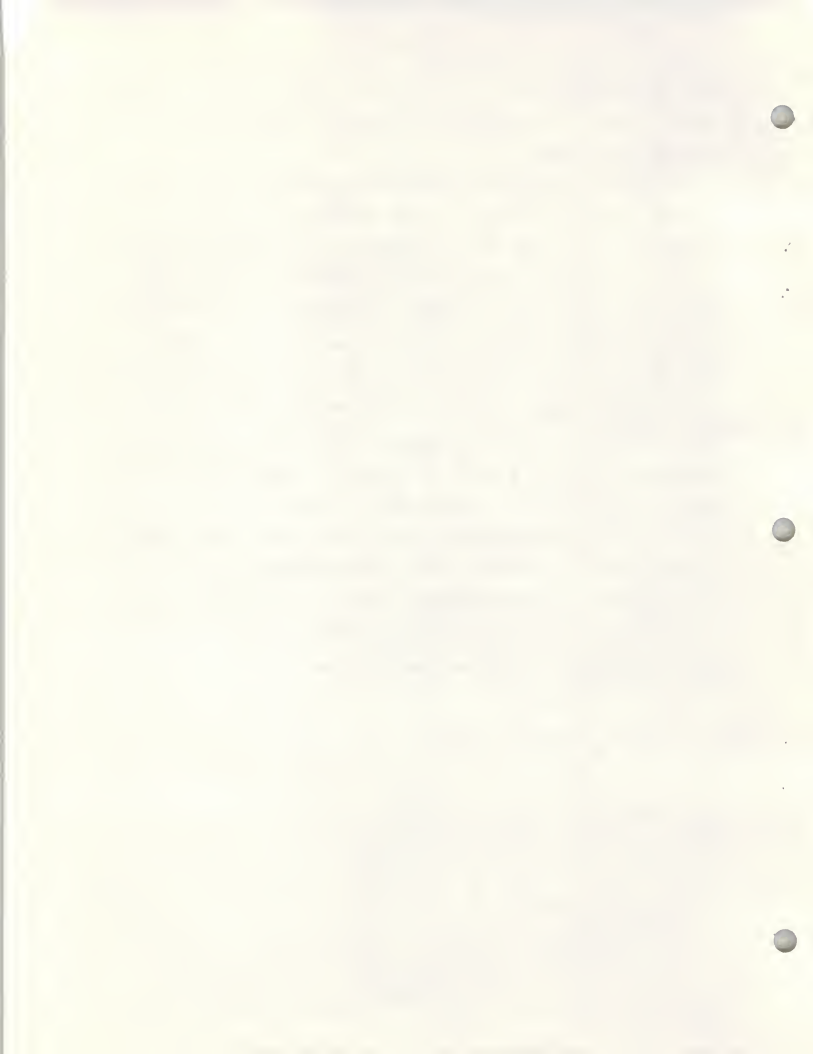
These regulations give the forest service the power to supplement the state traffic laws. Such special rules can be in conflict with or in addition to the already existing state laws. As a practical matter, though, these special rules only apply to the size of vehicles and the weight of vehicles that are permitted to make use of these roads. The one or two special rules that will be prescribed by the forest service will not conflict with state traffic laws but will be in addition to state traffic laws and will be enforced by the forest service. For example, if the forest service permits commercial haulers to carry a larger load on Special Service Roads than they could on a public highway, it will be the duty of the forest service to enforce this special rule and the state authorities are relieved of any responsibility or duty to enforce these special rules. Parenthetically, it should be noted that if a special rule allows commercial haulers to carry an excess, heavier-than-normal load, it could cause damage to the road, but since it is a Special Service Road and not included in the state or county highway system the state or county is not obligated to maintain or repair the road; hence, it would seem that these special rules would be of little concern to the local or state officials.

Section 3. This portion of the proposed bill makes it clear that the state law enforcement officials have no duty to enforce the provisions or the prohibitions of the special forest service rules when a road is designated as a Special Service Road. A



sign designating it as such will be posted by the forest service at the entrance to the road and the special rules will also be denoted on the sign.

Usually, a Forest Development Road designated as a Special Service Road will have only one or two special rules to be enforced by the forest service. Generally, such special rules will be in addition to state traffic laws and will not conflict with them. They are for purposes unrelated to those served by the state traffic laws. The state traffic laws will not be affected by the special rules. If a special rule conflicts with the state law, public use or state enforcement should not be otherwise affected. Where a special rule conflicts with a state traffic law in a way that could conceivably affect the enforcement of state rules, the forest service intends to consult with state and/or local officials before imposing the rule so that its impact should be understood and so traffic regulation problems and solutions can be anticipated. Rarely would these special rules be in conflict with the state traffic laws but would rather be supplemental to the state traffic code.



FORMER PROPOSED LEGISLATION

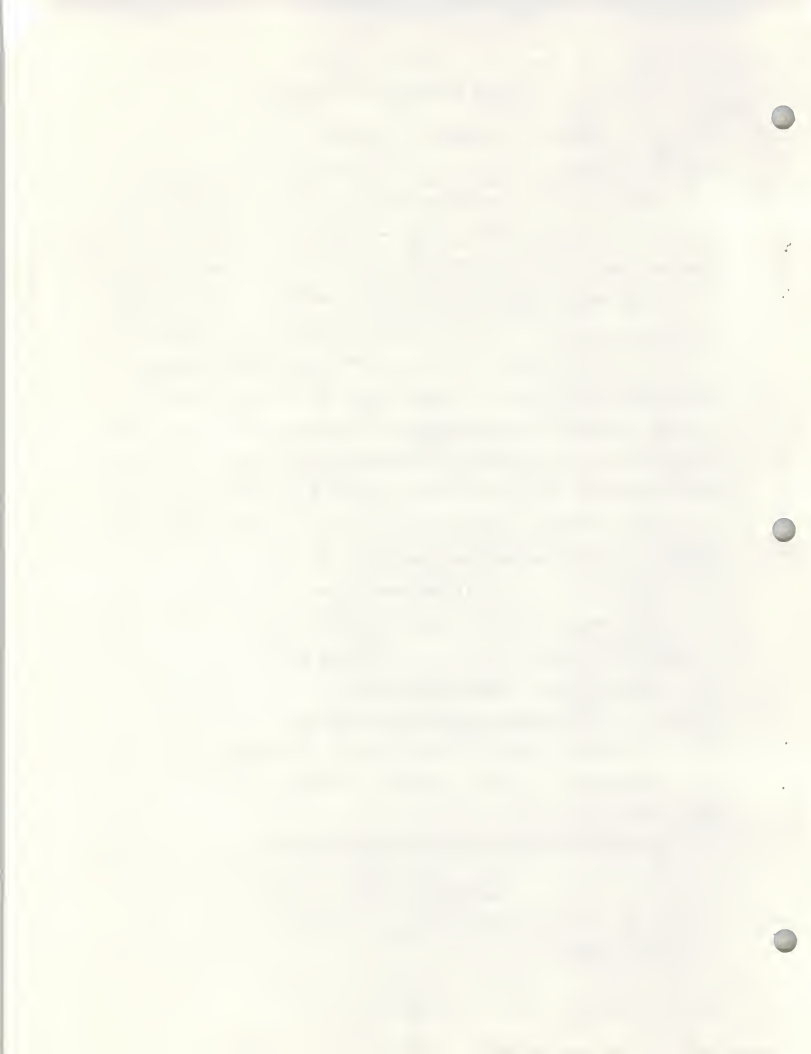
At the Forty-first Legislative Session House Bills 281 and 282 were submitted to give highway patrol and local sheriffs jurisdiction on Forest Development Roads to enforce the highway traffic laws of the state. If the Forty-second Legislative Session does not feel that the new proposed legislation is adequate, then it is submitted that the legislation which was formerly proposed should be adopted. House Bill No. 281 attempted to amend section 32-2114, Revised Codes of Montana, 1947, to include a Forest Development Road within the definition of a public highway to include certain forest service roads within that definition for the purpose of regulating traffic on the highways. This bill would have also amended section 32-1122, R.C.M. 1947, but this would have made the size and weight restrictions that are applicable to public highways not applicable to Forest Development Roads. Since these roads are built and maintained by the forest service, the forest service believes that it would be permissible to allow a vehicle to carry a heavier load than is prescribed by the Montana statute. This amendment would make the rules pertaining to the Forest Development Roads in conflict with the Montana statutes and as a result it would be the duty of the forest service and not the highway patrol or local sheriffs to enforce this special regulation.

The proposed legislation is set forth below:

HOUSE BILL NO. _____

INTRODUCED BY _____

32-1122, 32-2114



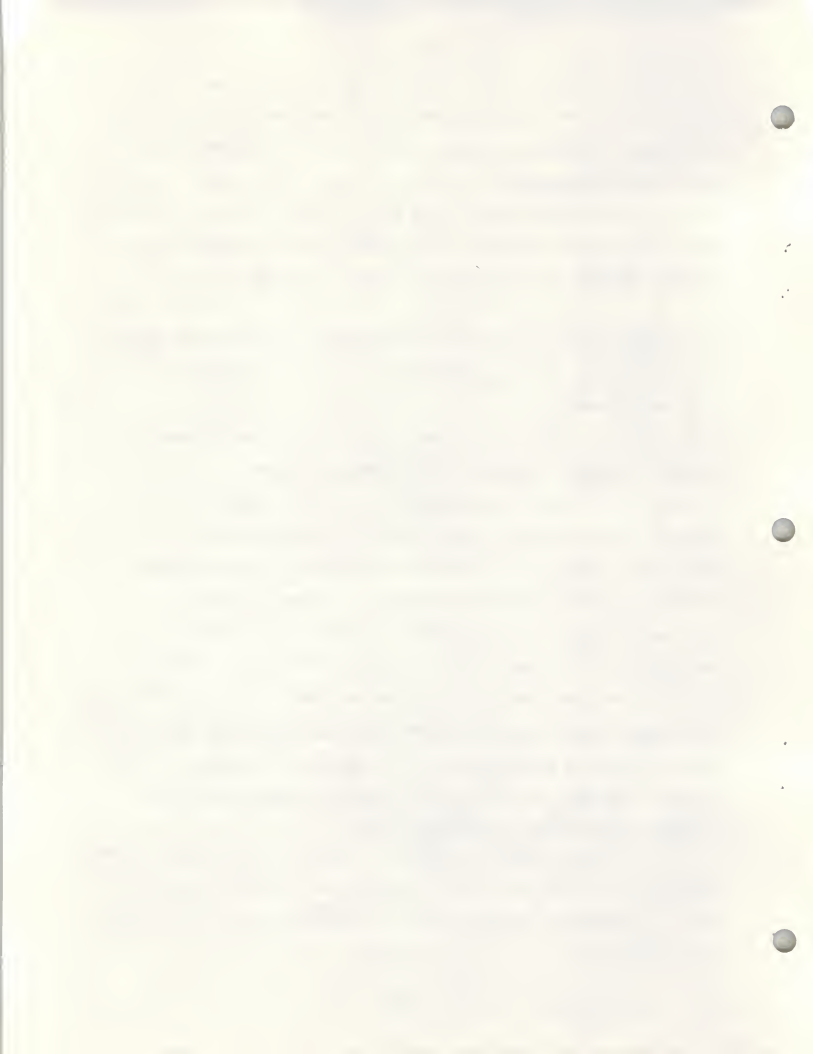
A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 32-2114, R.C.M. 1947, DEFINING STREET AND HIGHWAY FOR THE PURPOSE OF THE UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS, TO INCLUDE CERTAIN FOREST SERVICE ROADS WITHIN SAID DEFINITION, AND AMENDING SECTION 32-1122, R.C.M. 1947, TO EXCLUDE REGULATION OF SIZE AND WEIGHT OF VEHICLES USING SAID FOREST SERVICE ROADS FROM THE PROVISIONS PROHIBITING THE USE OF SAME ON ANY PUBLIC HIGHWAY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 32-2114, R.C.M. 1947, is amended to read as follows:

"32-2114. Street or highway--private road or driveway--roadway--sidewalk--laned roadway--through highway--controlled access highway. (a) Street or Highway. The entire width between the boundary lines of every street, highway and related structure as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain, and including all roads in this state owned or maintained by the United States and under the jurisdiction of the Forest Service, United States Department of Agriculture, whether or not financed by appropriated funds of the United States.

(b) Private Road or Driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.



(c) Roadway. That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(d) Sidewalk. That portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

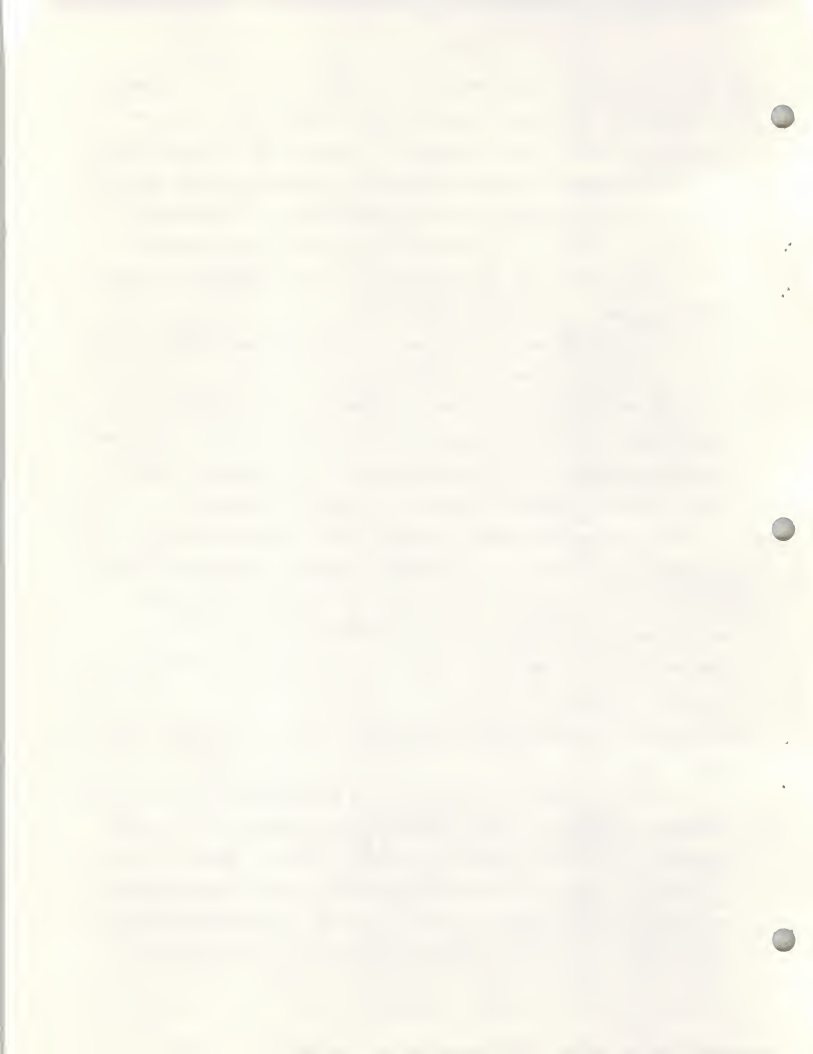
(e) Laned Roadway. A roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

(f) Through Highway. Every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this act.

(g) Controlled Access Highway. Every highway, street, or roadway, in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway."

Section 2. Section 32-1122, R.C.M. 1947, is amended to read as follows:

"32-1122. (1751.1) Regulation of size and weight of vehicles on public highways. It shall be unlawful and constitute a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this act, or any vehicle or vehicles which are

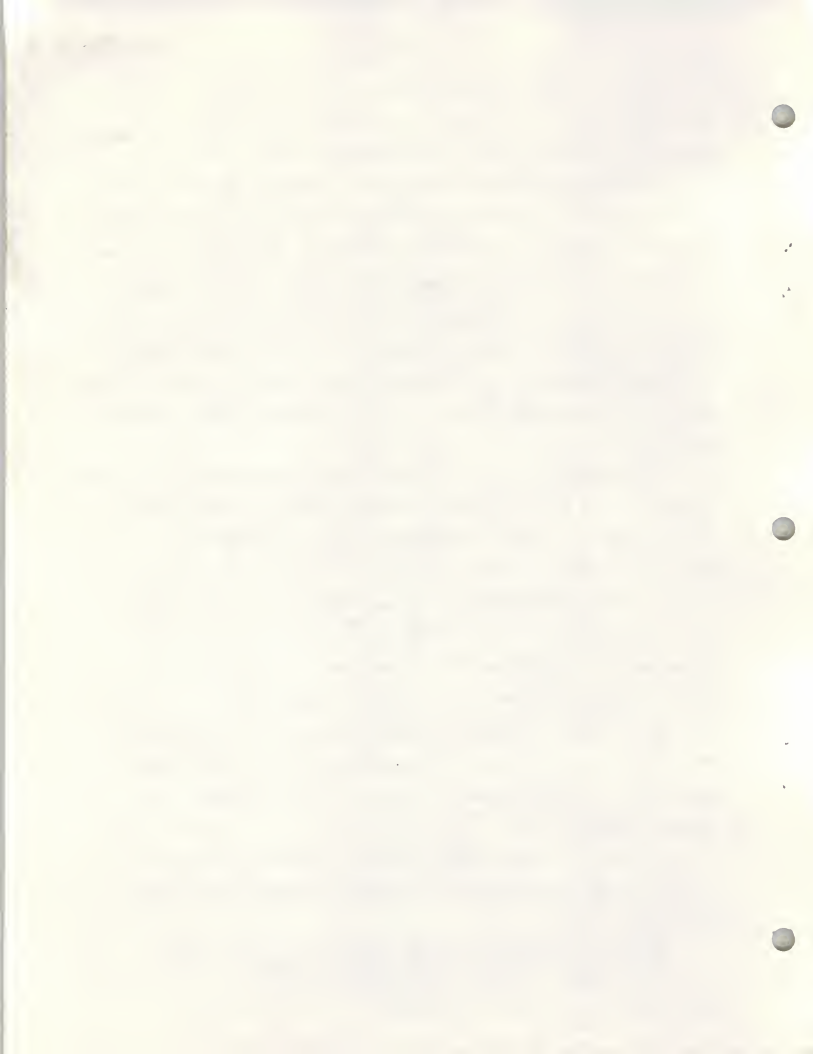


not so constructed or equipped as required in this act or the rules and regulations of the state highway commission, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations or substitute any other limitations or requirements except as express authority may be granted in this act; provided, however, that the provisions of this section shall not apply to vehicles using roads in this state under the jurisdiction of the Forest Service of the United States Department of Agriculture as included within the definition of street and highway in section 32-2114, Revised Codes of Montana, 1947."

This form of the proposed legislation will accomplish the same results as the prior proposed legislation as discussed above. At the last legislative assembly when this bill was being considered, questions arose as to whether these bills would have an adverse affect upon industry; that is, would this proposed legislation have any affect upon such things as G.V.W. provisions, the license tax gasoline dealers' provisions, the special fuel tax act and license plates requirement. It is submitted that the amendments to the aforementioned statutes would not affect the law, duties or responsibilities of any person or business that is concerned with G.V.W. or the aforementioned special taxes.

Section 32-2203, R.C.M. 1947, sets forth the general provisions of the highway code. This section states in part as follows:

"Subject to additional definitions contained in subsequent chapters of this code which are applicable to



specific chapters or parts, and unless the context otherwise requires, terms are defined as follows: ..."

This section then defines a public highway.

"(26) 'Public highways' -- All streets, roads, highways, bridges, and related structures, which have been or shall be:

"(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

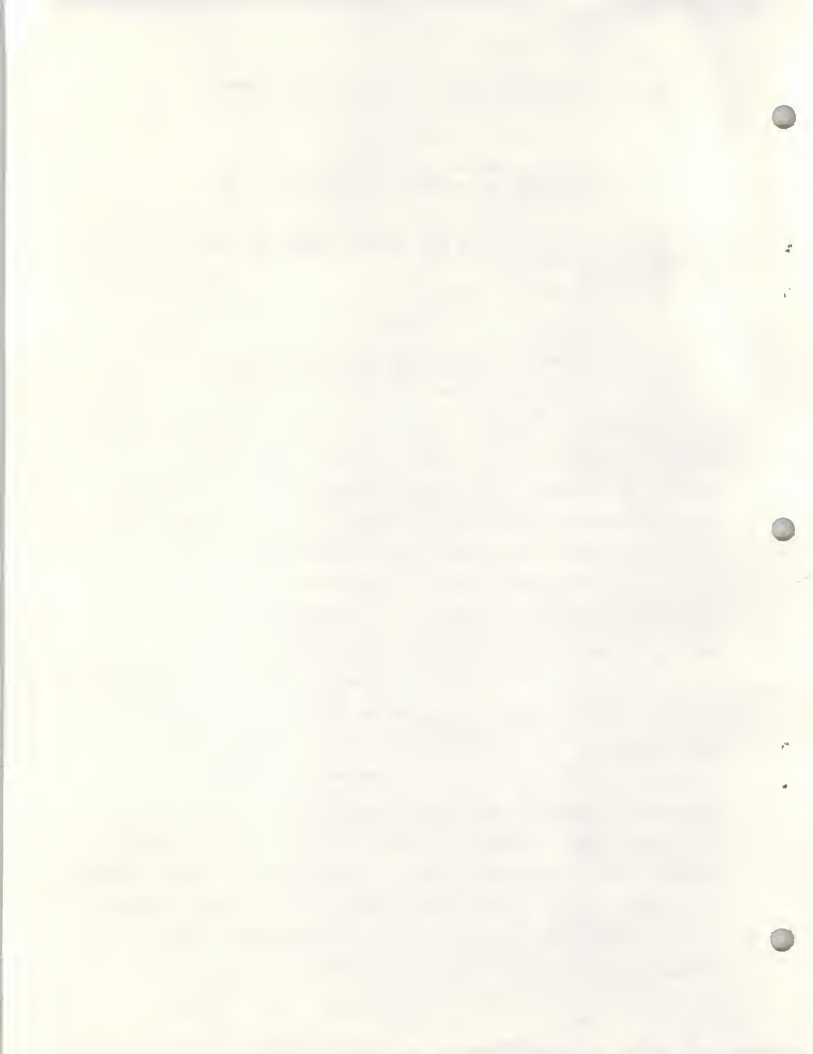
"(b) Dedicated to public use.

"(c) Acquired by eminent domain.

"(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof."

As the previous section indicated, a public highway can be defined in different ways to satisfy different requirements. Section 32-2114, R.C.M. 1947, sets forth the definition of a street or highway when used in applying the provisions of the Uniform Act Regulating Traffic on Highways. The proposed act now under consideration would include a Forest Development Road, and a Special Service Road under this definition so as to make these roads subject to the Uniform Act Regulating Traffic on Highways.

Chapter 33, Title 32, Revised Codes of Montana, 1947, pertains to gross vehicle weight. The statutes contained therein provide that a tax shall be paid by any person who operates a motor vehicle upon the public highways of Montana. To determine what constitutes a public highway, one must look at the definition that is set forth in section 32-2203, R.C.M. 1947. The context of this statute is quoted above. It should be noted that a Forest Development Road or Special Service Road is not included within this definition and hence would not be subject to the gross vehicle weight tax.

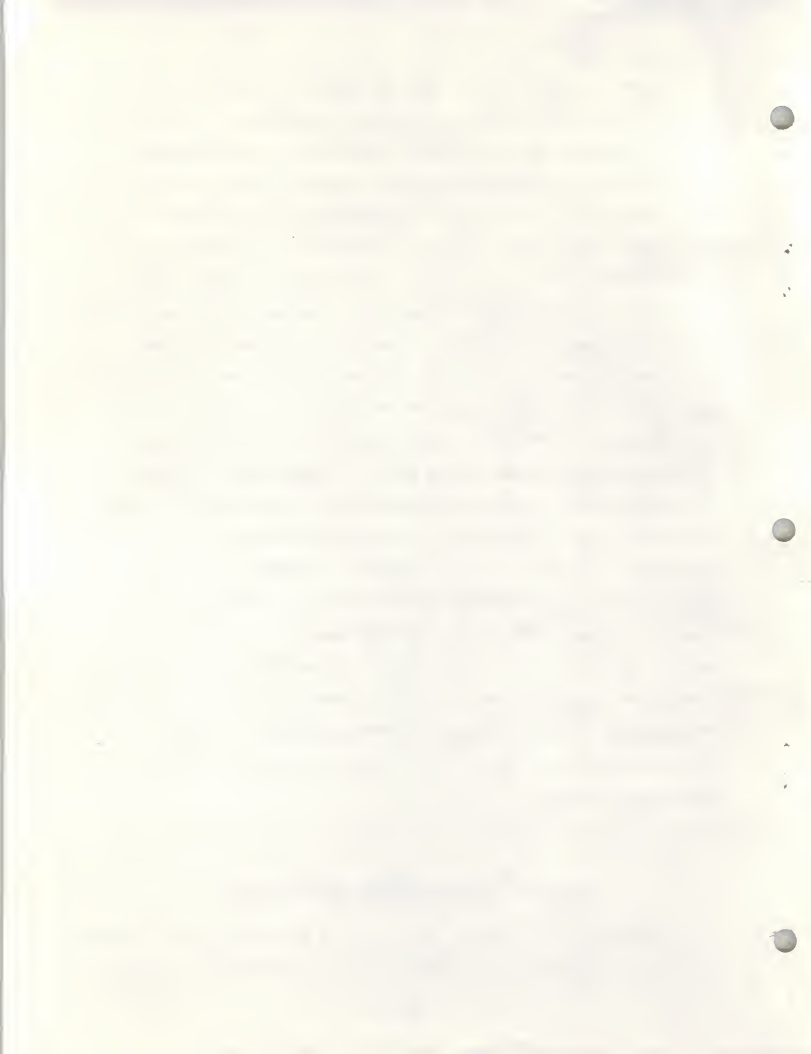


Chapter 18 of Title 84, Revised Codes of Montana, 1947, assesses various license taxes on gasoline dealers and distributors as well as providing for a special fuel tax. All these sections require anyone who operates a motor vehicle or uses a motor vehicle upon a public highway to pay this special tax. The words "use" and "public roads and highways" are defined in sections 84-1831, 84-1846, and 32-2203, R.C.M. 1947. None of these definitions includes Forest Development Roads within the meaning of the term "public highways and streets". Hence, the mandates of these statutes will not be applicable to those who operate motor vehicles upon Forest Development Roads or Special Service Roads.

Section 53-119, R.C.M. 1947, states that no person shall operate a motor vehicle on the public highways of the state without a license plate. To determine whether or not a person is required to purchase a license plate for his vehicle, one must again determine what is meant by "public highways". Chapter 1, Title 53, R.C.M. 1947, does not define the term "public highways". Consequently, one must look to the general definition contained in section 32-2203, R.C.M. 1947. Again, under this section a Forest Development Road or a Special Service Road is not included in the definition. Therefore, the provisions of chapter 1, Title 53, would not apply to vehicles which make use of these Forest Development Roads.

WAIVER OF SIZE AND WEIGHT RESTRICTIONS

Section 32-1122, R.C.M. 1947, states that it shall be unlawful to cause a vehicle which exceeds the weight limitations imposed by



the Montana statutes to use a public highway. The proposed bill now under consideration would make an exception to these restrictions as noted before. These Forest Development Roads are built and maintained exclusively by the forest service. No public monies are ever used. It is a fact that often motor vehicles, especially those involved in the logging industry, carry a heavier load than is permissible on the public highways of Montana. The restriction on size and weight limitations would not apply to vehicles using Forest Development Roads. This is a situation in which the forest service would have the authority to impose their own restrictions. The enforcement of the higher limit on weight and size would be the responsibility of the forest service and would not require any action by state or local agencies. The purpose of weight and size restrictions is to protect the roads, but since Forest Development Roads are maintained by the forest service, the theory behind the state traffic laws regarding weight and size limits would not be applicable in this situation.

